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Supreme Court, U.S.
FILED
FEB 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

J. STANLEY TYRAKOWSKI, Appellant,

V.

WLADYSLAWA BARR TYRAKOWSKI, Appellee.

ON APPEAL FROM CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION ONE.

JURISDICTIONAL STATEMENT

J. STANLEY TYRAKOWSKI
2800 Westbrook Ave
Los Angeles, CA 90046
(213) 876-5902

Appellant in Propria Persona

February, 1987.

QUESTIONS PRESENTED.

I. DOES THE COURT OF APPEAL HAVE JURISDICTION OVER AN UNTIMELY FILED CROSS - APPEAL ?

If the following facts existed:

1. Appellant's notice of appeal was filed timely in compliance with Cal. Rules of Court;

2. Appellee's notice of cross-appeal was filed untimely in violation of Cal. Rules of Court;

3. Appellee's cross-appeal was dismissed by an unanimous decision of the entire panel of the appellate court, consisting of three justices;

4. The cross-appeal was reinstated by a decision of one associate justice, on appellee's motion to vacate dismissal of cross-appeal and rein -

state cross-appeal, supported by pleadings of misleading information and omission of applicable rules of court.

5. The above violations have been brought to the attention of the reviewing court by appellant's opposing pleadings and letters to court.

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JURISDICTIONAL STATEMENT

J. Stanley Tyrakowski, the appellant, appeals from final decision (order) of the California Court of Appeal Second Appellate District, Division One, entered August 15, 1986 and reinstating appellee's cross-appeal.(Appendix[1/]-2; Exhibit[2/]-B) Decision has been petitioned for review to the Supreme Court of California and review was denied on Oct. 30, 1986. (A-3;Ex-C) Decisions as applied violate the appellant's individual rights by depriving him of equal protection of the law as guaranteed by the Fourteenth Amendment of Constitution of the United States.

1/ Hereafter "A"

2/ This document will cite appendixes "A thru G" which were attached to application for extension of time, granted by the U.S. Supreme Court Order No. A-513. Appendixes are filed with clerk's office of U.S.C and will be cited as "Ex".

DECISIONS (ORDERS) BELOW

The conflicting decisions (orders) which appear in the appendixes and exhi - bits, were rendered by the same appallate court. One, by an unanimous decision of the entire panel of the appallate court, dismissed the cross-appeal on July 31,1986. (A-1;Ex-A) The other, decision (order) vacated and reinstated cross-appeal which was rendered by one associate justice only on August 15, 196. (A-2;Ex-B)

The Supreme Court of California de - nied to review appellant's petition of the decisions of the Court of Appeal, by an order filed October 30, 1986.(A-3;Ex-C)

The Notice of Appeal to the Supreme Court of the United States, was filed on December 5, 1986 in the Court of Appeal, Second Appellate District, Division One. (Ex-F)

JURISDICTION

On November 7, 1986 an attempt was made by the appellant to file a petition for rehearing with the Supreme Court of California. The clerk's office refused to accept said petition for filing.

In a letter to Chief Justice of California dated November 10, 1986, appellant raised the federal question that denial of petition for review, sets the condition precedent to review by the United States Supreme Court of Court of Appeal decision (order) based upon precedent case, e.g. Banks V. California(1969) 395 U.S. 708. (Ex-D & E)

The jurisdiction of this Court is invoked under 28 U.S.C. #1257 (2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment:

> " . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The following California Statutes and Rules of Professional Conduct of the State Bar of California, too lengthy to set verbatim here, may be found in the Appendix as follows:

Code of Civil Procedures	Sec.663	A-5
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STATEMENT OF THE CASE

A. STATED FACTS PER RECORDS IN SUPERIOR COURT, CASE No. D 119309

Appellant, J. Stanley Tyrakowski in 1960 has been awarded a divorce in his first marriage as a cross-complainant, however, suffered financial consequencies because of his counsel malpractice, who did not oppose the content of a false - fied judgment as submitted for judge signature.

In 1966 appellant and appellee executed a prenuptial agreement prior to entering into a second marriage for both of them. This marriage has ended May 5, 1983. The appellee left the appellant during his absence, removing and illegally taking posession of his separate property. On June 14, 1984 appellant after his futile efforts of settlement and conciliation filed and served a " Petition " for

dissolution of marriage including as separate pleadings; (1) Prenuptial Agreement; (2) Tabulation of Separate Income and Contributions to Daily Expenses; (3) Complaint. On September 6, 1984, appellee filed " Response " contesting the validity of the premarital agreement.

On May 17, 1985 appellant filed motion for summary judgment supported by extensive documentation. Summary judgment was denied on July 2, 1985, based upon statement number 8 and 10 of the appellee declaration, executed on June 16, 1985 and drafted by the appellee attorney Samuel J. Wells. (A-9) Trial court findings determined that said statements made under penalty of perjury were falsehood. (A-8) Perjury was further confirmed by the appellee testimony on cross - examination at the trial.

The 10 days trial started on Nov. 14, 1985 and was interrupted due to appellant's emergency hospital admittance, because of his severe attack of unstable angina. The trial resumed January 6,1986.

Appellant and appellee filed post trial motions to vacate judgment and enter different judgment on March 20 and March 28, 1986 respectively. Both motions were summarily denied on April 14, 1986 by the trial judge.

Copy of pleadings request for statement of decision filed on January 21, 1986, filed by attorney Wells was not served upon the appellant. (A-10)

The attorney Well's submitted judgment, upon his own request was entered May 6, 1986 in spite of appellant's opposition as not being in compliance with trial court tentative decision of

Jan. 13, 1986 (A-8) and court filed on March 6, 1986 Statement of Decision.(A-11)

Governed by procedural requirements set by posttrial motions, appellant has filed on May 12, 1986 a timely notice of appeal from parts of judgment.3/

On July 2, 1986 appellee, has filed OSC requesting $ 10,000 in attorney's fees and $ 5,000 in cost on appeal. The request has been denied trial judge, court order of July 16, 1986. (A-4)

3/ From part of judgment ordering appellant to pay appellee $ 60,000 for her " personal efforts and labor " and $ 20,000 in appellee's legal fees. The trial court did not consider appellant's submitted evidence, that the appellee's engineering position and the acquired assets are the results of appellant's guidance, advice and help, which are the direct consequences of appellant's personal efforts and labor, However, the trial court decision was improper in that efforts and labor were performed in mutual cooperation as husband and wife and therefore such services are voided by courts for lack of consideration on the theory they should be performed by husband and wife without compensation.

On July 3, 1986 appellee has filed an untimely cross-appeal. 4/

B. STATED FACTS PER RECORDS IN COURT OF APPEAL, CASE No. 2/1 B020735

On July 15, 1986 appellant has filed motion to dismiss cross-appeal. July 30, 1986 appellee filed opposition to motion to dismiss cross-appeal. On July 31, 1986 by an unanimous decision of the entire panel the appallate court dismissed the cross-appeal. (A-1;Ex-A)

August 1, 1986 appellant has filed a letter in the court of appeal, addressed to the Presiding Justice of the Appallate Court, regarding the misconceptions in appellee opposing pleadings and copy mailed to appellee's attorney. (A-12)

4/ From part of judgment that the premarital agreement was valid and not voidable by the appellee as stated by the trial court findings and court filed Statement of Decisions.

On August 6, 1986 appellee has filed a motion to vacate dismissal of cross - appeal and to reinstate cross - appeal. August 11, 1986 appellant filed opposi - tion to appellee's motion " to vacate and reinstate." August 15, 1986 appellee's motion to vacate and reinstate cross - appeal was granted by one Associate Justice of the Appallate Court.(A-2;Ex-B)

On September 15, 1986 appellant has filed petition for review in the Supreme Court of California, from Court of Appeal decision (order) of August 15, 1986. Appellee filed an " Answer and Request for Fees " on October 3, 1986. Appellant's " Reply " was filed October 10, 1986. The Supreme Court of California denied appellant's Petition for Review by an order filed October 30, 1986.(A-3;Ex-C)

On November 10, 1986 appellant

mailed a letter to the Supreme Justice of California. (Ex-D) Appellant received a reply in a letter dated November 19, 1986 from the office of the Clerk of the Supreme Court of California. (Ex-E)

On Dec.5, 1986 appellant has filed Notice of Appeal to the Supreme Court of the United States in the Court of Appeal. (Ex-F) On January 8, 1987 appellant has mailed application for extension of time to docket a case on appeal, said application has been granted by the U.S. Supreme Court Order No. A-513, extending time for docketing an appeal to and including February 27, 1987.

Throughout the course of this litigation, appellee's attorney Samuel J. Wells repeatedly abused the legal procedures, too numerous for presentation in this document. In (3) three instances

statements made under penalty of perjury are contrary to facts in records and transcript of court proceedings. Mr. Wells declarations were executed and filed on:

September 18, 1984; September 20,1984
May 31, 1985; June 3, 1985
April 7, 1986; April 9, 1986

In essence trial court rewarded attorney Samuel J. Wells for his misconconduct and violations of law.5/

5/ The trial court was informed of attorney Wells misconduct and was in posession of evidence (records) proving offenses of perjury, nevertheless the trial court ordered the appellant to " CONTRIBUTE THE SUM OF $ 15,000 IN APPELLEE'S FEES, AND IN ADDITION THE SUM OF $ 1,750 AS TO THOSE MATTERS DEFERRED TILL TIME OF TRIAL FOR SANCTIONS, IN THE TOTALSUM OF $16,750" The sum of $16,750 has been arbitrary increased to $ 20,000 without any material findings and justificationin the court filed Statement of Decision. Further sanctions have been imposed upon the appellant in the amount of $ 1,300, whereby the appellee attorney was not even reprimanded for his violation of law. This all was done to discourage appellant from resisting this malicious prosecution, including delay tactics in issuing court order to permit the appellant to deposit statutory undertaking on appeal.

THE QUESTIONS ARE SUBSTANTIAL

The appellant filed motion to vacate on March 20, 1986, and the appe - llee on March 28, 1986. Those motions were filed under statute of CCP Sec.663. Both motions were summarily denied by the trial court order of April 14, 1986.

- The CCP Sec.663a permits the filing of motion to vacate before the entry of judgment. (A-5) The denial of motion to vacate, determined that under Cal. Rules of Ct.3(b):

> " ... the time for filing the notice of appeal from judgment is extended for all parties until the earliest of 30 days after entry of order denying the motion to vacate; or 90 days after filing the first notice of intention to vacate; or 180 days after entry of judgment."

To avoid any pitfalls, when a motion to vacate a judgment and enter another and different judgment was filed and denied, one shall proceed as follows:

Determine the earlier of 180 days after a judgment or 90 days after filing the notice of intention to vacate, and enter the earlier on calendar; If the motion is denied before the date then entered on the calendar, determine the earlier of the calendared date or the date 30 days after entry of the order of denial. The earlier of those two dates should be entered on the calendar and any inapplicable dates expunged.

Judgement entered: May 6, 1986
Earlier 180 days: November 3, 1986
Filing " motion to vacate ":March 20,1986
Earlier 90 days: June 18, 1986
Motion to vacate denied: April 14, 1986
Earlier 30 days after denial:May 14,1986

The time limit for filing notice of appeal under Cal. Rules of Ct.3(b) is May 14, 1986.

On May 12, 1986 appellant filed a timely Notice of Appeal in the Superior Court.

Cal. Rules of Ct.3(c) Cross - Appeal) states:

> " When a timely notice of appeal is filed under subdivision (a) of Rule 2 or under subdivision (a) or (b) or Rule 3, any other party may file a notice of appeal within 20 days after mailing of notification by the superior court clerk of such first appeal or within the time otherwise prescribed by the applicable subdivision, whichever period last expires...."

Under Cal. Rules of Ct.3(c), notice of cross - appeal must be filed within 20 days after superior court clerk mails notice of appellant's appeal. Rule 3(c) extends time to file a notice of cross - appeal, it does not shorten it. Under this rule also, a cross-appealing party may proceed under the applicable time limit for the initial appeal, if it expires later than the limit for cross - appeal.

The extended time limit to file

a cross-appeal is 20 days after May 12, 1986, which is on or about June 1, 1986.

The other option to file a timely cross-appeal would be the applicable time limit for the initial appeal, which in this case is May 14, 1986.

From the above two dates it is obvious that period that last expires is June 1, 1986 date.

The time limit for filing a timely cross-appeal is June 1, 1986. The appellee filed a notice of cross-appeal on July 3, 1986 almost one month late.

> " As with initial appeal a notice of cross-appeal is jurisdictional and must be filed in timely fashion. A cross-appeal filed even a day late will be dismissed."
> Kapelus v. United Title Guaranty Co. (1971) 15 CA3d 648, 651; 93 CR 278.

> " When the reviewing court does not have jurisdiction it cannot consider the merits of the cross-appeal, and cross-appeal must be dismissed."
> Estate of Hanley, (1943) 23 C2d 120; 142 P2d 425.

Appellee failed to file a timely cross-appeal, court of appeal had no jurisdiction, cross-appeal must be dismissed.

To further and deliberately confuse the issue, appellee's attorney on August 6, 1986 filed a motion to vacate dismissal of cross-appeal and to reinstate cross-appeal and a motion for fees and sanctions. The appellee attorney knew exactly the implication in filing appeal and cross-appeal, when posttrial motions are involved, at the time when he has filed motion to vacate and reinstate cross-appeal on August 6, 1986.

A copy of a letter to Presiding Justice of the Court of Appeal, dated July 31, 1986,(A-12) which has been filed on August 1, 1986 with the clerk's office of the court of appeal, has been mailed

July 31,1986 to the appellee's attorney. Said letter explains, in step by step fashion how to calendar time to appeal and cross-appeal under Cal. Rules of Ct. 3(b) and 3(c), when posttrial motions to vacate judgment and their denial are involved.

The above stated facts, make it conclusively clear that the only reason for appellee attorney to file motion to vacate and reinstate, was to mislead the court and manipulate its decision, by providing incorrect information.

The appellee's cross-appeal was dismissed by an unanimous decision of the entire appellate court panel, on July 31, 1986 by an order, quote: " Motion granted cross-appeal dismissed " without expre - ssly indicating that it is without prejudice. Therefore, the cross-appeal has

been dismissed with prejudice. Motion granted with " prejudice " denies the right to file for another cross-appeal, and for that matter to file for reinstatement.

This being a case, where jury trial was not a matter of right to the appellant, CCP Sec. 909 permits the court of appeal, to take additional evidence for " the purpose of making the factual determinations or for any other purpose in the interest of justice."

Considering all the stated facts above, one has to conclude that the court of appeal being informed by the appellant's pleadings and letter (A-12) of the facts acted with prejudice against the appellant when reinstating the cross-appeal.

The reinstatement of cross - appeal is unlawful and in contradiction

to the majority decision of the entire panel of the Appellate Court.

The appellant's petition for review of the decision of the Court of Appeal to the Supreme Court of California was not reviewed. Thus, the court of appeal decisions (orders) were neither affirmed, reversed or modified by the order of the Supreme Court of California. Instead, appellant's petition was denied, on October 30, 1986.(A-3;Ex-C)

> " If the court of appeal opinion (decision) conflicts with the law as stated by the supreme court, a denial of a petition is not to be taken as agreement with court of appeal opinion (decision), it is not a tacit overruling of itself by the supreme court. Denial of the petition means only the interest of justice do not require the supreme court to exercise its power in that particular case."
> People v. Triggs (1973) 8 3Cd 884, 890; 106 CR 408, 412;

This case is a classic example where all of the (3) prerequisite requirements are present, for the Supreme Court of California to order a review of a decision of Court of Appeal, as stated in Cal. Rules of Ct.29(a), which rule relates to the Supreme Court of California.

(1) Does the court of appeal have jurisdiction over an untimely filed cross-appeal ? This certainly represents a settlement of important question of law.

(2) The unanimous decision to dismiss an untimely cross-appeal, which is a jurisdictional decision can not be vacated and reinstated by the very fact that court of appeal was without jurisdiction of the cause.

(3) The overruling of the original jurisdictional decision rendered by the entire panel of the court of appeal

by the decision (order) of one justice, lacks the concurrence of required majority of qualified justices.

The following questions are raised:

(1) Does the Supreme Court of California, have the right to consider that this case, in the interest of justice do not require to exercise its power ?

(2) Has the Supreme Court of California abused its discretion, or even violated the law, by not having reviewed the appellant's petition ?

Those certainly are SUBSTANTIAL QUESTIONS to be decided and resolved by this Court.

CONCLUSION

For reasons stated in this Jurisdictional Statement document, the Supreme Court of the United States, has to conclude that, the appellee's cross - appeal was filed untimely and under the law of Statutes, California Rules of Court and applicable precedent cases cited, the Court of Appeal, Second Appallate District Division One, had no jurisdiction over the appellee cross-appeal.

THE UNANIMOUS DECISION (ORDER) OF THE ENTIRE APPELLATE COURT PANEL OF JULY 31, 1986 MUST BE UPHELD, AND THE AUGUST 15, 1986 DECISION (ORDER) OF ONE JUSTICE SHALL BE REVERSED AND VACATED.

At the crux of due process is the beief that judicial process being based upon combative and adversary

proceedings has some shortcomings and inadequacies. The process itself encourages some individuals resort to lies, which because of nature and human character are preferable in acceptance. Misrepresented facts and incorrect information presented with flair are more atractive than plain truth and bare facts.

Because, of the appellee's attorney experience and throughout knowledge of the legal process and trial tactics, he was capable to manipulate decisions of courts below, by submitting pleadings of suitably prepared content of misleading and incorrect information.

The courts being overburden with litigations, try to dispose expeditiously of backlog of cases by striving for a compromise, sometime at the expense of one of the litigants and not always in the

interest of justice.

Point in case, are the proceedings in courts below, where the appellant represented himself in propria persona, and was denied the equal protection of the laws, guaranteed by the United States Constitution, Fourteenth Amendment.

This litigation is completely unjustified and senseless and is perpe - tuated by an ungreatfull and greedy appellee and her scheming attorney, and needlessly occupies the courts only.

The legal action did not benefit either of the litigants, the real and only beneficiary being the appellee's attorney, who by his misconduct, and the abuse of legal procedures maliciously prosecuted the appellant, violating the law and the Rules of Professional Conduct of the State Bar of California.

Therefore, this highest Court in the Land shall exercise its power and act summarily on the merits of this case solely on the basis of this jurisdictional statement and put an end to this litigation.

Respectfully submitted,

J. Stanley Tyrakowski

J. STANLEY TYRAKOWSKI,
Appellant in propria persona
2800 Westbrook Ave
Los Angeles, California 90046
(213) 876-5902

February 1987.

PROOF OF SERVICE BY MAIL

I am a citizen of the United Staes and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: P.O.Box 600, Beverly Hills, California 90213. On this date, March 16, 1987, I served the within;

JURISDICTIONAL STATEMENT in re; " J. Stanley Tyrakowski, Appellant vs. Wladyslawa Barr Tyrakowski, Appellee " in the Supreme Court of the United States, October Term, 1986, No.....and separate appendix thereto:

on persons interested in said action by placing 3 true copies thereof enclosed insealed envelopes with first class postage prepaid, in the United States post office, by certified mail at Los Angeles, California, addressed as follows:

LAW OFFICES OF SAMUEL J. WELLS
11661 SAN VICENTE BLVD., SUITE 1010
LOS ANGELES, CA 90049

All parties required to be served have been served.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.
Executed on March 16, 1987, at Los Angeles California.

Thomas Stockfisch
Thomas Stockfisch

86 1510

Supreme Court, U.S.
FILED
FEB 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

J. STANLEY TYRAKOWSKI, Appellant,

V.

WLADYSLAWA BARR TYRAKOWSKI, Appellee.

ON APPEAL FROM CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION ONE.

APPENDIX
TO
JURISDICTIONAL STATEMENT

J. STANLEY TYRAKOWSKI
2800 Westbrook Ave
Los Angeles, CA 90046
(213) 876-5902

Appellant in Propria Persona

February, 1987.

I N T R O D U C T I O N

Appellant, J. Stanley Tyrakowski appologizes for his inadvertent mistake in his submitted jurisdictional statement on February 25, 1987 as to the form and presentation of the appendix. The 39 copies of appellant's jurisdictional statements have been returned and received by the appellant on March 5, 1987.

Pursuant to the March 3, 1987 letter from the Office of the Clerk of the Supreme Court of the United States, the mistakes have been corrected, and the appendix is hereby submitted as a separate document, with double spaced typed content in its entirety, including full text of court's decisions and all enclosed documents except quotations of parts from Code of Civil Procedures.

The enclosed reprints of documents

represent only a very small portion of the existing documents which will support the statements made in this jurisdictional statement as it is beyond the scope and aim of this document to enclose the vast quantities of material at this stage.

Only objective and impartial examination of all the records in courts below, transcripts of courts proceedings, including evidence introduced and submitted at the trial can establish the magnitude and extent of committed violations of law and the deliberate injuries and mental harm done to the appellant.

Such examination, however, is not within the experienced realities, considering the aspects and the nature of the case, the vast tasks involved and the pratical and realistic approach to this matter.

Respectfully resubmitted

J. Stanley Trakowski
Appellant in Propria Persona
2800 Westbrook Ave
Los Angeles, California 90046
(213) 876-5902

March, 1987.

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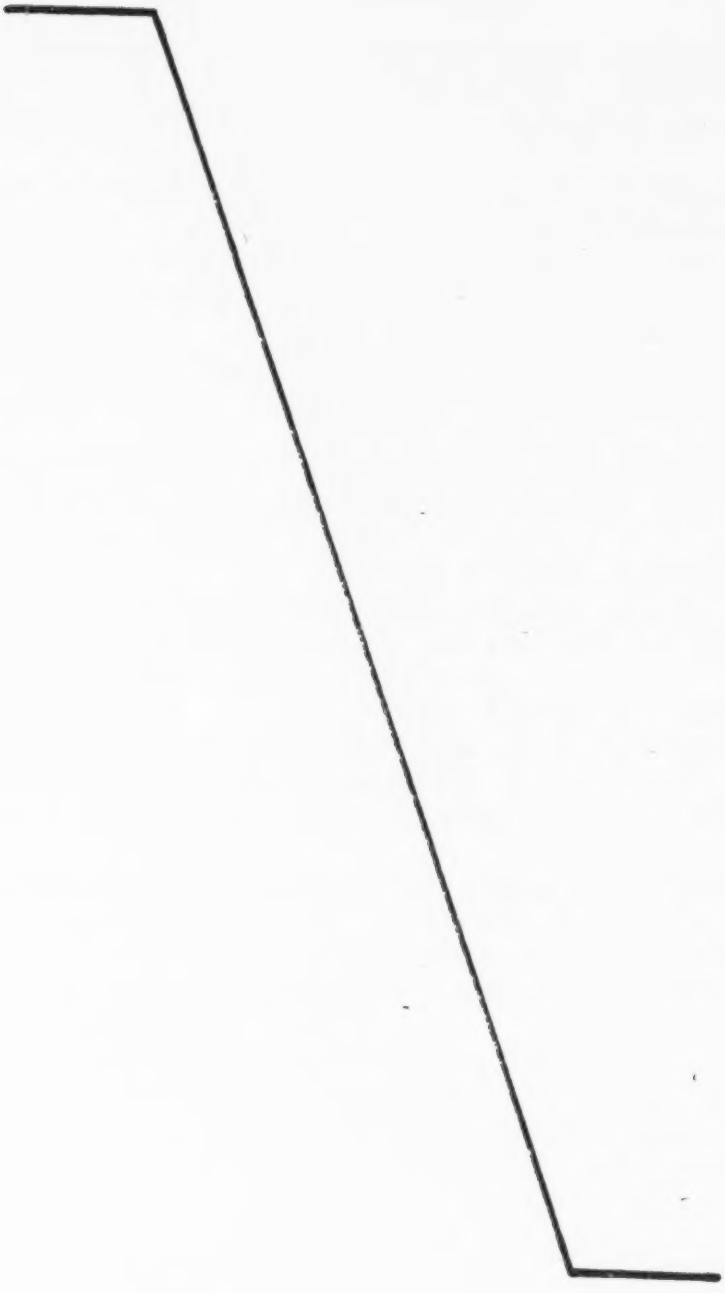

OFFICE OF THE CLERK
COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION: 1, Date 07/31/86

RE: TYRAKOWSKI, J STANLEY

VS.

TYRAKOWSKI, WLADYSLAWA BARR

2 Civil B020735
Los Angeles No. D 119309

THE COURT: Motion Granted Cross-Appeal

is Dismissed.

(original) /s/ Spencer P.J.
Hanson A.J
Devich A.J

A-1

OFFICE OF THE CLERK
COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION: 1, Date 08/15/86

RE: TYRAKOWSKI, J STANLEY

VS.

TYRAKOWSKI, WLADYSLAWA BARR

2 Civil B020735
Los Angeles No. D 119309

THE COURT: Motion To Vacate Order Of Dismissal And Reinstate Cross-Appeal Granted. Motion For Fees And Sanc - tions Denied.

(original) /s/ Hanson act. P.J

A-2

2/1 No. B020735

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

TYRAKOWSKI, Appellant

v.

TYRAKOWSKI, Respodent

Appellant's petition for review DENIED.

Filed: Oct. 30. 1986

/s/ BIRD
Chief Justice

A-3

J. STANLEY TYRAKOWSKI
2800 Westbrook Ave
Los Angeles, California 90046
Ph: (213) 876-5902

Appellant in Propria Persona

COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPALLATE DISTRICT

DIVISION ONE

J. STANLEY TYRAKOWSKI, Appellant vs. WLADYSLAWA BARR TYRAKOWSKI, Appellee.	Case No.B020735 (LASC D 119309) NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that J. STANLEY TYRAKOWSKI, in propria persona, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final decision (order) of the Court of Appeal, of the

State of California, Second Appallate District, Division One, vacating decision (order) of dismissal and reinstating cross-appeal, entered this action Aug. 15, 1986 and petition for review of above decision (order) denied by the Supreme Court of the State of California on October 30, 1986.

This appeal is taken pursuant to: " The jurisdictional statute governing Supreme Court review of state court judgment or decrees (decisions) either by appeal or certiorari, related only to final judgment or decrees (decisions) rendered by the highest court of a state in which a decision could be had." 28 U.S.C. # 1257.

In California, a court of appeal decision will satisfy these jurisdictional requirements only, if the party has

had its petition for review denied by the California Supreme Court.

Banks v. California (1969) 395 US 708

Dated: December 5, 1986

(original) /s/ J. Stanley Tyrakowski
J. Stanley Tyrakowski, Appellant

(Note: The original has been filed with the Clerk's Office, Court of Appeal, Second Appallate District, Division One, on December 5, 1986.)

J. STANLEY TYRAKOWSKI
2800 Westbrook Ave
Los Angeles, California
Ph: (213) 876-5902

Petitioner/Appellant in Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In Re the Marriage of:	No. D 119309
Petitioner: J.STANLEY TYRAKOWSKI	OPPOSITION TO RESPONDENT'S MOTION RE: " POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR FEES PURSUANT TO CC Sec. 4370.5 AND CCP Sec.128.5"
and	
Respndent: WLADYSLAWA BARR TYRAKOWSKI	
	Date: July 16,1986 Time: 9:00 A.M. Dept: 7

Petitioner/appellant in opposition to repondent's instant motion raises the following points:

1. The instant motion is <u>defective in general format,</u> as it shall state in the

opening paragraph (on first page of pleading and not in Memorandum of Points and Authorities) the nature of the order being sought and the grounds for issuance of the order, as required under the Cal. Rules of Court, Rule 311(a).

2. That the original respondent's attorney request for attorney's fees, executed on June 5, 1986 and filed for the June 16, 1986 hearing was also defective in form, by being filed under the cover of " RESPONSIVE DECLARATION TO ORDER TO SHOW CAUSE OR NOTICE OF MOTION" Form 1285.40, and was served untimely on the petitioner/appellant. Thus said request was in violation of Cal.Rules of Court, Rule 311(a) and 317(a).

3. The reply to paragraphs I and II of respondent's instant motion is as follows: " Petitioner's motion to have Court set

amount of bond on appeal was denied without prejudice" so was respondent's request.

The meaning " without prejudice " implies that same relief may be sought, but on different grounds. The respondent's attorney is violating the trial court ruling of June 16, 1986, which states: " Respondent's request for attorney fees is denied without prejudice "by submitting a motion on same grounds as request for the June 16, 1986 hearing, by refering to the same sections of Code of Civil Procedures Sec. 128.5 and Civil Code Sec.4370(b) in support of this instant motion.

The petitioner/appellant was in his rights to file for relief from undertaking to stay enforcement of judgment under Code of Civil Procedures Sec. 995.240.

The petitioner/appellant can establish that he is " indigent " at the time

that he is requested to file an undertaking. The cost of a bond for stay of enforcement of judgment on appeal is 2 % of the amount of the bond. The yearly cost on a $120,000 bond amounts to $2400, what creates a $200 monthly expense.

The petitioner/appellant monthly disposable income is $1579 and the total expenses amount to $1565 leaving no funds for the payment of the $200 monthly charge on the $120,000 bond, not to mention of any contingency and God forbids cathastrophic illness.

The respondent is alluding to petitioner's " $400,000 " home and to his savings of $121,900. Those assets together with social security are the basic sources of petitioner's income, to sustain himself in his present circumstances of impaired health and advanced age.

All the respondent's phraselogy of " frivolous " " totally and completely without merit " and in " bad faith " will not change the reality of facts that petitioner has to live pay his obligations from his limited income. In contrast the respondent's gross monthly income of $3684.83 is twice the amount of that of the petitioner. ($1812)

The repondent's lately acquired residence with paying obligation of $1500 monthly, demonstrates respondent's financial manipulation of her total gross income of $3684.83 to represent her total monthly expenses in excess of her net total monthly disposable income, in respondent's filed Income and Expense Declaration.

Prior to or about August 11, 1985 the respondent resided in one of the units

of the apartment complex, she owns in Sherman Oaks, CA with a " rental " obligation of approximately $400 per month.

The apartment complex appreciated in value from the purchased price to the present market value of approximately $400,000. The respondent has a cash equity in said income property of $165,000 as stated by respondent. The above stated assets do not include respondent's equity in her new residence. Respondent's earning capability extends into the next 15 years.

As a matter of fact, the Civil Code Sec. 4370.5(b) supports petitioner's argument in court's determination what is just and reasonable award and in particular subsection (b)(2) which states: " The extent to which the conduct of each party and the attorney furthers and frustrates the

policy of the law to promote settlement of litigation and where possible to reduce the cost of litigation by encouraging cooperation between the parties and attorneys."

The attached exhibits A, B, C, D, and E to petitioner's opposing pleadings to respondent's " ORDER TO SHOW CAUSE " and " REQUEST FOR FEES AND COSTS WITH RESPECT TO APPEAL " shall furnish addi - tional evidence in support of petitioner's presented argumentation and illustrate, how attorney for the respondent Mr. Wells frustrated efforts in conciliation and settlement.

C O N C L U S I O N

WHEREFORE, respondent's request for attorney fees must be denied based upon the presented argumentation and consideration of irrelevancy of repondent's initiated motions " ORDER TO SHOW CAUSE "

which is executed and served in violation of " APPLICATION OF COURT ORDERS " under the Cal. Rules of Court, Rule 1225(b) and which also serves as a cover for the actual motion for " REQUEST FOR FEES AND COSTS WITH RESPECT TO APPEAL."

Dated: July 9, 1986

(original) /s/ J. Stanley Tyrakowski

J.Stanley Tyrakowski, petitioner/ appellant

(Note: original filed with County Clerk on July 9, 1986)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF OF LOS ANGELES. (Minute Order)

Date: July 16, 1986 DEPT. 7

Hon: BARBARA JEAN JOHNSON, Judge

R. GATES, Deputy Clerk

L. FLORES, Deputy Sheriff

K. REITERMAN, Reporter

D 119309 In RE the marriage of:

TYRAKOWSKI, J. STANLEY, Petitioner

and

TYRAKOWSKI, WLADYSLAWA, Respondent

Counsel for Petitioner: PRO PER

Counsel for Respondent: SAMUEL WELLS

NATURE OF PROCEEDINGS: RESPONDENT'S OSC RE ATTORNEY FEES AND SANCTIONS.

Wladyslawa Tyrakowski, Samuel Wells and J. Stanley Tyrakowski are sworn and testify. The cause is argued and submitted.

The Court orders as follows: The Court imposes sanctions pursuant to section 128.5 on account of a totally and comple-

tely and without merit motion to be relieved of the requirements of filing an undertaking on the basis of indigency when the petitioner had assets of at least $400,000 of which $120,000 are liquid. The Petitioner is to pay directly to the respondent the sum of $500 as sanctions for filing that initial motion based upon indingency and is to be paid within 30 days.

Pursuant to section 4350.5(b), the Court finds the respondent, though she has the ability to pay her attorney fees, has had the legal fees necessitated by a response to such frivolous motion on two occasions, namely the original date of the motion and today, in order to seek fees and sanctions, she has incured the sum of $800 unnecessarily in legal fees.

Pursuant to section 4370.5(b), the

Petitioner to pay directly to Respondent's counsel the sum of $800 within 30 days of this date.

As to Respondent's request for attor - ney's fees and costs of appeal, the Court finds the Respondent has the ability to pay her own legal fees and cannot find that petitioner's appeal is totally without merit for purposes of assessing fees under 4370.5(b) as to her fees on appeal since the Court has found that she has the ability to pay her own legal fees. The Court further finds that Respondent has an 8 unit apartment building and the gross salary of approximately $3500 per month, and a net salary of approximately $2975 per month and a savngs at this time of approximately $6000. Therefore her request for a portion of legal fees and costs on appeal is denied.

The Court rules as followson the Petitioner's motion to deposit of Certificate of Deposit in lieu of Bond: In lieu of a bond on appeal the petitioner may deposit certificates of deposit in the amount of $120,000 made payable to the County Clerk of Los Angeles County and accompanied by an agreement executed by the Petitioner authorizing the Conty Clerk to collect, sell or othrewise apply the deposit to enforce the liability of Petitioner on the deposit pursuant to section 995.710 of the Code of Civil Procedure. The agreement shall include the address where the Petitioner may be served with notices, papers or other documents. In the event the judgment is affirmed on appeal and not paid within 30 days of issuance of the remitittur, the Clerk of the Court shall collect, sell, or otherwise apply

the money contained in the certificates of deposit to satisfy the judgment in favor of Respondent and to satisfy costs if any, which may be awarded on appeal and then return the balance then remai - ning to the petitioner.

The Court also orders that in the event the judgment is affirmed, interest shall accrue and be paid on the judgment in the amount of 10% from the date of the original judgment in this court.

Copy of this minute order is sent this date to both counsel of record by U.S. Mail as follows:

J.Stanley Tyrakowski
2800 Westbrook Ave.
Los Angeles, CA 90046

Law Offices of
Samuel J. Wells
11661 San Vicente
Blvd., Suite1010
Los Angeles,CA
90049

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES. (Exparte Order)

Date: July 31, 1986 DEPT. 7

Hon: BARBARA JEAN JOHNSON, Judge

R. GATES Deputy Clerk

J. ALLENDER Deputy Sheriff

(None) Reporter

D 119309 In RE the marriage of:

TYRAKOWSKI, J. STANLEY, Petitioner

and

TYRAKOWSKI, WLADYSLAWA, Respondent

Counsel for Petitioner: PRO PER

Counsel for Respondent: SAMUEL WELLS

NATURE OF PROCEEDINGS: EXPARTE ORDER

It appearing to the court that through inadvertence the minute order of July 16, 1986 for Department 7, in the above entitled action does not properly reflect the court's intention, said minute order is ordered corrected nunc pro tunc as of July 16, 1986, as follows:

by adding: " County Clerk is ordered to accept for deposit cashier's check in the amount of $120,000 for deposit under section 995.710 CCP with interest payable from date of deposit to date of withdrawal."

Copy of this order is sent by U.S.Mail this date to counsel of record as follows:

J. Stanley Tyrakowski
2800 Westbrook Ave
Los Angeles, CA 90046

Law Offices of
Samuel J. Wells
11661 San Vicente
Blvd., Suite 1010
Los Angeles, CA
90049

Code of Civil Procedure.

Sec.663 GROUNDS FOR VACATING JUDGMENT.

" A judgment or decree, when based upon a decision by the court, or special verdict of a jury, may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgment entered, for either of the following causes, materially affecting the substantial rights of the party and entitling the party to a different judgment:

1. Incorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected." ....

Sec. 663a NOTICE OF INTENTION TO MOVE FOR VACATION OF JUDGMENT.

" The party intending to make a motion mentioned in the last section must file with the clerk and serve upon the adverse party a notice of his intention. designating the grounds upon which the motion will be made, and specifying the particulars in which the legal basis for the decision is not consistent with or supported by the facts, or in which the judgment or decree is consistent with the special verdict, either

1. Before the entry of judgment;or ......"

A-5

Code of Civil Procedure.

Sec.909 NO JURY - FINDINGS CONTRARY TO OR IN ADDITION TO THOSE OF TRIAL COURT.

" In all cases where trial by jury is not a matter of right or where trial by jury has been waived, the reviewing court may make factual determinations contrary to or in addition to those made by the trial court. The factual determinations may be based on evidence adduced before the trial court either with or without the taking of evidence by the reviewing court. The reviewing court may for the purpose of making the factual determinations or for any otherpurpose in the interest of justice, take additional evidence of or cocerning facts occuring at any time prior to the decision of the appeal, and may give or direct the entry of any judgment or order and may make any further or other order as the case may require. ...."

Rules of Professional Conduct of the State Bar of California.

RULE 1 - 100. RULES OF PROFESSIONAL CONDUCT, IN GENERAL.

" ..... These rules shall be binding upon all members of the State Bar of California, and the wilful breach of any of these rules shall be punishable as provided by law. Nothing in these rules is intended to limit or super - sede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation thereof., The prohibition of certain conduct in these rules is not to be interpreted as an approval of conduct not specifically mentioned. ..... "

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPT.,7 HON. BARBARA JEAN JOHNSON, JUDGE

IN RE THE MATTER OF:	
PETITIONER: J. STANLEY TYRAKOWSKI	CASE NO.
AND	D119309
RESPONDENT: WLADYSLAWA BARR TYRAKOWSKI	

REPORTER'S PARTIAL TRANSCRIPT

(FINDINGS AND ORDER OF THE COURT ONLY)

MONDAY, JANUARY 13, 1986

LOS ANGELES, CALIFORNIA; MONDAY 13, 1986
11;45 A.M.

DEPT.,7 HON. BARBARA JEAN JOHNSON, JUDGE

APPEARANCES:

THE PETITIONER PRESENT AND REPRESENTING HIMSELF IN PROPRIA PERSONA. THE RESPONDENT PRESENT WITH HER COUNSEL, SAMUEL J. WELLS.

(KATHY J. REITERMAN, CSR NO. 4449
OFFICIAL REPORTER PRO TEMPORE.)

* * *

FINDINGS AND ORDER OF THE COURT

THE COURT: I'VE CONSIDERED THE EVIDENCE AND WEIGHED THE CREDIBILITY OF ALL THE WITNESSES AND MAKE THE FOLLOWING FINDINGS AND ORDERS:

THE COURT FINDS THE ALLEGATIONS OF THE PETITIONER TRUE AS FAR AS THE STATISTICAL FACTS. THE PARTIES WERE MARRIED MARCH 17, 1966, AND SEPARATED MAY 5TH OF 1983.

THERE ARE IRRECONCILABLE DIFFERENCES IN THE MARRIAGE WHICH HAVE LED TO AN IRREMEDIABLE BREAKDOWN. THE DISSOLUTION OF MARRIAGE IS GRANTED THIS DATE.

COURT FINDS THE PARTIES ENTERED INTO A VALID PREMERITAL AGREEMENT ON JANUARY 21TH OF 1966.

THE COURT FINDS NEITHER UNDUE INFLUENCE NOR A CONFIDENTIAL RELATIONSHIP.

COURT FINDS --

MR. TYRAKOWSKI: EXCUSE ME, YOUR HONOR ?

THE COURT: NEITHER UNDUE INFLUENCE NOR A CONFIDENTIAL RELATIONSHIP.

MR. TYRAKOWSKI: THANK YOU, YOUR HONOR.

THE COURT: COURT FINDS ATTORNEY DONALD GALLAGHER PREPARED A STANDARD PREMARITAL CONTRACT FOR THE PARTIES WHO ENGAGED HIS SERVICES FOR THAT PURPOSE ONLY.

COURT FINDS BOTH PARTIES WERE PRESENT IN HIS OFFICE WHEN HE EXPLAINED THE AGREEMENT AND THE AGREEMENT WAS SIGNED.

THE COURT FINDS FUNDAMENTAL TO THEIR AGREEMENT WAS EACH PARTY'S CONSENT THAT THE WAGES AND INCOME OF EACH PARTY WOULD BE THAT PARTY'S SEPARATE PROPERTY; THAT EACH WOULD CONTRIBUTE TO JOINT LIVING EXPENSES IN PROPORTION TO EACH PARTY'S EARNINGS.

THE COURT FINDS THE PREMARITAL AGREEMENT WAS SUBSTANTIALLY PERFORMED BY THE

SUBSEQUENT CONDUCT OF THE PARTIES.

THE COURT FINDS EACH PARTY CONTRIBUTED TO THE PARTIES' BASIC COSTS OF LIVING IN PROPORTION TO THEIR EARNINGS BY MEANS OF CAREFUL RECORD KEEPING OF ALL EXPENDITURES AND INCOME. THE PARTIES KEPT SEPARATE BANK ACCOUNTS THROUGHOUT THE MARRIAGE AND NEVER COMMINGLED THEIR INCOME WITH THAT OF THE OTHER PARTY. TITLE TO REAL PROPERTY WAS TAKEN IN THE NAME OF THE PARTY WHO APPLIED HIS OR HER INCOME TO THE SAME.

TITLE TO 2800 WESTBROOK WAS TAKEN IN THE PETITIONER'S NAME. PETITIONER OWNED THE LAND PRIOR TO MARRIAGE AND BUILT THE HOUSE AFTER MARRIAGE. SUMSFOR THE CONST - RUCTION OF SAID WERE FROM HIS INCOME.

TITLE TO THE EIGHT-UNIT APARTMENT BUILDING IN SHERMAN OAKS WAS TAKEN IN THE RESPONDENT'S NAME AND WAS PAID WITH IN -

COME OF THE RESPONDENT.

TITLE TO THE UNIT IN OCEANSIDE WAS TAKEN IN THE PETITIONER'S NAME AND WAS PAID WITH PETITIONER'S INCOME.

THE COURT CONFIRMS AS SEPARATE PROPERTY OF EACH PARTY THE FOLLOWING:

TO THE PETITIONER THE 2800 WESTBROOK PROPERTY -- I WILL MAKE AN ADDITIONAL ORDER IN REGARD TO THAT PROPERTY A LITTLE BIT LATER; THE OCEANSIDE PROPERTY; THE CAR IN HIS NAME; FURNITURE PURCHASED WHOLLY BY HIS INCOME AND THAT WHICH WAS OWNED PRIOR TO MARRIAGE; BANK ACCOUNTS IN HIS NAME; RETIREMENT AND EMPLOYEE BENEFITS IN HIS NAME; AND PROCEEDS THEREFROM.

TO THE RESPONDENT AS HER SEPARATE PROPPERTY, THE SHERMAN OAKS APARTMENTS; THE CAR IN HER NAME; FURNITURE PURCHASED SOLELY WITH HER INCOME AND THAT OWNED

PRIOR TO MARRIAGE; BANK ACCOUNTS IN HER NAME; RETIREMENT AND EMPLOYEE BENEFITS IN HER NAME AND PROCEEDS THEREFROM.

THE GOLD WATCH AND CHAIN IN HER CUSTODY, WHICH ORIGINATED AS THE PETI - TIONER'S MOTHER'S PROPRTY, COURT FINDS WAS GIVEN TO HER AS A GIFT FROM THE PETITIONER.

THE COURT FINDS THE PARTIES PURCHASED A LIMITED NUMBER OF ITEMS OF FURNITURE, FURNISHINGS, AND HOUSEHOLD ITEMS OF A PERSONAL NATURE WITH FUNDS CONTRIBUTED BY EACH. SUCH ITEMS ARE REFLECTED IN THE DAILY EXPENSE JOURNAL. AS TO THOSE ITEMS STILL IN EXISTENCE, THE ITEMS ARE DIVIDED EQUALLY BY THE PARTIES. THE PARTIES ARE ORDERED TO COOPERATE FORTHWITH IN THEIR DIVISION.

THE COURT FURTHER FINDS THE RESPON - DENT CONTRIBUTED TO THE 2800 WESTBROOK

PROPERTY BY MEANS OF HER PERSONAL EFFORTS, LABOR HAVING THE VALUE OF $60,000, FOR WHICH SHE DID NOT RECEIVE COMPENSATION OR REIMBURSEMENT. THE PETITIONER IS THEREFORE ORDERED TO PAY TO THE RESPONDENT THE SUM OF $60,000 WITHIN 90 DAYS OF THIS DATE.

THE COURT FINDS EACH PARTY IS ABLE TO PAY HIS AND HER OWN ATTORNEY FEES. HOWEVER, THE COURT FINDS RESPONDENT'S LEGAL FEES WERE SUBSTANTIALLY INCREASED BY THE VOLUMINOUS AND OFTEN IRRELEVANT AND UNNECESSARY DOCUMENTS AND HEARINGS INITIATED BY THE PETITIONER.

THE COURT THEREFORE ORDERS THE PETITIONER TO CONTRIBUTE TO RESPONDENT'S LEGAL FEES BY PAYING DIRECTLY TO HER ATTORNEY THE SUM OF $15,000 AND, IN ADDITION, THE SUM OF $1,750 AS TO THOSE MATTERS DEFERRED TILL TIME OF TRIAL FOR

SANCTIONS, IN THE TOTAL SUM OF $16,750, PAYABLE ON OR BEFORE 90 DAYS FROM THIS DATE.

THE COURT FURTHER ORDERS EACH PARTY SHALL FORTHWITH EXECUTE ALL DOCUMENTS, INDIVIDUAL DEEDS, AND INSTRUMENTS OF TITLE NECESSARY TO CARRY OUT THE TERMS OF THIS ORDER. AND UPON FAILURE TO DO SO WITHIN 15 DAYS, THE COURT MAY, UPON APPROPRIATE MOTION, APPOINT THE COUNTY CLERK TO EXECUTE SAID DOCUMENTS.

THE COURT RESERVES JURISDICTION AS TO THE DIVISION OF THE ITEMS OF FURNITURE ACQUIRED WITH JOINT FUNDS AND AS TO THE EXECUTION OF DOCUMENTS REQUIRED BY THE JUDGMENT.

RESPONDENT IS TO PREPARE THE ORDER AND SUBMIT A COPY TO THE PETITIONER.

COURT FURTHER ORDERS THE EXHIBITS RETURNED TO THE OFFERING PARTIES. GOOD

LUCK TO YOU.

MR. WELLS: THANK YOU, YOUR HONOR.

MR. TYRAKOWSKI: THANK YOU.

(THE PROCEEDINGS WERE CONCLUDED)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In re the Marriage of	No. D 119 309
Petitioner: J.STANLEY TYRAKOWSKI	STATEMENT OF DECISION.
and	
Respondent: WLADYSLAWA BARR TYRAKOWSKI.	

Trial in the above-captioned matter was heard in Department 7, before the Honorable Barbara Johnson on November 14, 15, 18 and 19; December 3,1985; and January 6, 7, 8, 9, 10 and 13, 1986. The petitioner, Stanley J. Tyrakowski, was present in court and represented himself in propria persona. Respondent, Wladyslawa Barr Tyrakowski, was present in court represented by Samuel J. Wells.

Evidence both real and documentary having been received, the matter was

submitted on January 13, 1986 and the court made its oral statement of tentative decision. Respondent having requested a Statement of Decision and having submitted her proposal for such statement the court now issues its Statement of Decision.

1. Petitioner and respondent married March 17, 1966, and separated May 5, 1983. There are irreconcilable differences between the parties which led to a irremediable breakdown in their marriage. The dissolution of marriage is granted effective January 13, 1986.

2. Petitioner's (sic) former name, Wladyslawa Barr, is restored to her.

3. Petitioner and respondent have waived all rights to future support and the court therefore, terminates jurisdiction as to spousal support.

4. Both petitioner and respondent were born in what is now Poland. Each came to the United States as young adult. Peti - tioner became an electrical engineer and then arrived in the United States in 1948 and thereafter married his former wife. Upon the dissolution of that marriage, petitioner was awarded real property as his sole and separate property upon which he later built a residence during his marriage to respondent.

5. Respondent married her prior American husband before she came to the United States in 1961. Such marriage was disso- lved within six month after her arrival. Respondent's English was not fluent when she first arrived. Respondent studied English in 1961. Shortly thereafter she studied architectural, mechanical and electrical drafting at Los Angeles City

College. Petitioner and respondent resided together in petitioner's apartment from June, 1962 until their marriage on March 17, 1966. Respondent worked at the Bank of America from 1961 to 1964. In 1964, she worked as a draftsperson for Engineering Corporation of America and in 1965 for Bechtel Corporation. Both petitioner and respondent spoke Polish and English in the home.

6. Petitioner and respondent entered into a valid premarital contract on January 21, 1966. Attorney Donald Gallagher prepared said contract for the parties after they engaged his services for that purpose. Neither party had had a previous client relationship with Mr. Gallagher. The premarital contract contained the provisions of Mr. Gallagher's standard premarital agreement. Both

parties were present in Mr. Gallagher's office when he explained the premarital contract to them and each party signed it.

7. Fundamental to the pre-marital agreement was each party's consent to and understanding that (a) all wages and income of each party and all property acquired with same would be that party's separate property and (b) that each party would contribute to joint living expenses in proportion to each party's earnings.

8. A confidential relationship did not exist between petitioner and respondent at the time of the execution of the marital settlement agreement and neither party used undue influence to induce the other party to enter into the agreement.

9. During the marriage the pre-marital contract was substantially performed by the subsequent conduct of petitioner and

respondent including the following:

a. Petitioner and respondent contributed to the parties' basic costs of living in proportion to his and her adjusted gross earnings (as declared in yearly federal income tax returns) by means of careful record keeping in a daily expense ledger.

b. Whenever loans were made between the parties such loans were repaid and were often evidenced by formal documentation.

c. Each party kept separate bank accounts throughout the marriage and did not comingle his or her income with that of the other party.

d. Title to real property was taken in the name of the party who applied his or her wages and income to same as follows:

(1) Title to the home located at 2800 Westbrook, Hollywood, California was taken in petitioner's name. Petitioner owned said land prior to marriage and built a house thereon after his marriage to respondent. Petitioner paid for the construction of said residence with his earnings and with proceeds from the sale of the adjoining parcel of land owned by him prior to marriage.

(2) Title to the eight-unit apartment building located at 4503 and 4505 Fulton Avenue in Sherman Oaks, California was taken in respondent's name and was purchased with the income received by respondent during the marriage.

(3) Title to the residential unit located at 1388 Temple Heights Drive,

Oceanside, California was taken in petitioner's name and was paid with his income received by petitioner during the marriage.

10. There was substantial evidence of agreement between petitioner and respondent that the real property as well as major debts in connection with such real were to remain the separate property and debt of the spouse in whose name titled was held and who expended his or her wages and income in the purchase of same. There was also substantial evidence of agreement that the spouse who expended his or her wages or income on behalf of the other spouse was to be reimbursed in the actual amount of such expenditure. With respect to the construction of the home located at 2800 Westbrook Avenue, Holly - wood, California, the court finds respon-

dent performed substantial finish work on such residence and that such labor has the reasonable value of $60,000. The court further finds that petitioner paid for all construction expenses except for respondent's labor. The court, therefore, orders petitioner to pay respondent the sum of $60,000 within 90 days of entry of judgment in this matter.

11. The court orders each party to execute forthwith all documents; individual deeds and instruments of title necessary to carry out the terms of this order and upon failure to do so within 15 days, the court may, upon appropriate motion, appoint the County Clerk as its Commissioner to execute said documents.

12. The court finds each party is able to pay his and her own attorney fees. However, the court finds respondent's

legal fees were substantially increased by the voluminous, irrelevant, and unnecessary documents and hearings initiated by petitioner. The court, therefore, orders pursuant to Civil Code Section 4370.5(b)(2) that petitioner contribute to respondent's legal fees by paying directly to respondent's attorney the sum of twenty thousand dollars ($20,000) payable on or before 90 days from entry of judgment in this matter.

Since the remaining requests were not germain to the decision no response is given to those requests.

Counsel for respondent is to prepare the judgment, submit a copy to petitioner, and then submit same to the court for signature.

The clerk is ordered to send this date by United States mail a copy of this

Statement of Decision to petitioner and to respondent through her attorney of record.

Dated: March 6, 1986

(original) /s/ Barbara Jean Johnson
BARBARA JOHNSON, JUDGE
LOS ANGELES COUNTY SUPERIOR COURT

(Note: Original filed March 6, 1986, County Clerk)

LAW OFFICES OF SAMUEL J. WELLS
11661 San Vicente Boulevard
Suite 1010
Los Angles, California 90049
(213) 476-7311

Attorneys for Respondent
WLADYSLAWA BARR TYRAKOWSKI

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In Re The Marriage of;	)Case No:D 119309
Petitioner: J. STANLEY TYRAKOWSKI	)DECLARATION OF RESPONDENT WLADYSLAWA BARR TYRAKOWSKI IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
and	
Respondent: WLADYSLAWA BARR TYRAKOWSKI	)Date: July2,1985 Time: 9:00 A.M. Dept: 2

I, WLADYSLAWA BARR TYRAKOWSKI, do hereby declare as follows:

1. I am Respondent in this proceeding, and if called upon as a witness could and would testify competently to the matters

set forth in this Declaration, all of which are known to my personal knowledge except as otherwise indicated.

2. I first arrived in the United States from Poland in January, 1961. I was married to Mr. William Barr, a marriage which was subsequently dissolved.

3. Following my arrival in the United States, I slowly began to learn to speak the English language and took one semester of adult education classes at the Cambria School for adults at night.

4. I met the Petitioner, J. STANLEY TYRAKOWSKI in September, 1961. At that time, I was 23 years old and Petitioner was 40 years old.

5. Petitioner befriended me and became my financial and educational adviser. He began to translate various articles and documentsfor me, advise me on deci -

sions regarding my finances, and generally advised me regarding my life.

6. In 1961, when I met Petitioner, I was working for the Bank of America at nights. I worked in the central cash vault counting money. I earned approximately $220.00 per month. I had no virtually no other business experience. I discontinued working for the Bank of America in 1964. Approximately six months after I left, I secured employment at the Engineering Corporation of America, working part time as a journeyman darftsman. Thereafter, in 1965, I went to work for the Bechtel Corporation in Vernon, California. My duties were to draft on mylar sheets, working from marked up blueprints. I worked with other people of Polish descent who helped me in translating English words and translating English instructions.

7. Petitioner and I began living together in June, 1962. During this time, Petitioner paid most of the expenses for rent and food, while I did all of the cooking and housekeeping. Petitioner had medical problems involving his stomach and appeared to be quite grateful for my assistance in cooking meals.

8. In the latter part of 1965, approximately six months before we eventually married, Petitioner began discussing the subject of marriage with me. Petitioner had told me he had been previously married and had engaged in rather extensive litigation regarding, his marriage ultimately dismissing his attorneys and acting as his own attorney. He stated that he would want me to sign an agreement because he did not want to be "taken" like he was "taken" by his first wife. He stated that

the agreement would provide that we would share expenses. At no time prior to the execution of the agreement was I ever advised of the concept of community property, nor was I advised of what my rights would be following a marriage in the absence of an agreement. At no time did I consult or speak to legal counsel in connection with this agreement.

9. On approximately January 21,1966, Petitioner brought the agreement to the apartment in which we were living and I, signed it.

10. When I signed the agreement, I did not sign it in front in anyone else. I do not know Donald C. Gallagher, whose name appears on the document nor have I ever met Mr. Gallagher, to my knowledge. At the time I signed the agreement, although Petitioner told me it provided for

sharing expenses, neither Petitioner nor anyone else went through the agreement line-by-line with me to translate it for me. No one explained to me the legal effect of my signing the agreement or the fact that I supposedly would be waiving any rights when I signed the agreement.

I understood primarily that this was something that Petitioner wanted to do before we got married. I trusted Petitioner and signed the agreement because he wanted me to do so.

11. Subsequent to my signing the agreement, I received no copy of the agreement until approximately 1979.

12. With respect to the residence located at 2800 Westbrook Avenue, Hollywood, California, which is one of the assets at issue in these proceedings, it was my understanding at all times that

this house was owned by both Petitioner and myself. Petitioner always discussed the house as "our house." He stated to me on several occasions that whatever might be said "on paper" was "just on paper . We're partners." Indeed, in the building of the house, Petitioner and I worked as partners and I devoted approximately two years to working basically as the general contractor supervising the work of subcontractors while the house was being built. I certainly would not have done this had it been my understanding that the house belonged solely to Petitioner.

I declare under penalty of perjury that the foregoing statements are true and correct, except as to matters stated upon my information and belief, which matters I believe to be true.

Executed on this 16 day of June,1985, at Los Angeles, California.

(Original) /s/ Wladyslawa Barr Tyrakowski

WLADYSLAWA BARR TYRAKOWSKI
Declarant

(Note; The original document has been filed on June 19, 1985 with County Clerk.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES. (Minute Order)

Date: July 2, 1985 DEPT. 2

Hon: STEPHEN M. LACHS, Judge

V. SMITH Deputy Clerk

J. CARRILO Deputy Sheriff

D. SALYER Reporter

D 119309 In RE the marriage of:

TYRAKOWSKI, J. STANLEY, Petitioner
and
TYRAKOWSKI, WLADYSLAWA BARR, Respondent

Counsel for Petitioner: IN PRO PER (X)

Counsel for Respondent: S.J. WELLS (X)

NATURE OF PROCEEDINGS:

(1) MOTION OF PETITIONER FILED MAY 17, 1985, REQUESTING SANCTIONS AGAINST RESPONDENT AND RESPONDENT COUNSEL PURSUANT TO CCP 128.5

(2) MOTION OF PETITIONER FILED MAY 17, 1985, FOR SUMMARY JUDGMENT (CCP SECTION 437c)

All sanctions and fees request are reserved until the time of trial.

Petitioner's motion for summary judgment is denied. The court finds there is a triable issue of material fact as to the validity of the property settlement agreement, i.e. whether respondent executed the agreement due to fraud, duress, undue influence and or without informed consent. (See respondent's June 19, 1985 declaration, number 8 and 10) CCP 437c.

Notice is deemed waived.

Minutes Entered
JUN 24, 1985
County Clerk

Honorable Barbara Jean Johnson
Judge of the Superior Court
Department 7, Room 240
111 North Hill Street
Los Angeles, CA 90012

February 12,1986

Re: Marriage of Tyrakowski
Case No.. D 119309

Dear Judge Johnson:

This correspondence is in reference to Respondent's counsel Mr. Samuel J. Wells letter, dated February 11, 1986 and addressed to Honorable Barbara Jean Johnson, and the Petitioner's " Objections To Respondent's Proposal As To Content Of Statement Of Decision."

Your Honor, please refer to and consider the subject of Petitioner's letters dated January 21 and 24, 1986, addressed to Attorney Samuel J. Wells and Mr. Wells' letter dated January 22, 1986 addressed to Petitioner, regarding subject matter. True copies of said letters have

forwarded by mail for the Court record.

Please note,that Petitioner has not been duly served or notified by the Respondent,of the date nor pursuance to what Section of the Code of Civil Procedures or California Rules of Court the " Request For A Statement Of Decision " has been made.

Mr. Wells in Respondent's opposition to Petitioner's Motion for Summary Judgment, used the same method, by claiming that Petitioner's motion was not filed in timely fashion, also demanded that Petitioner take his motion off calendar. Those objections were overruled Honorable Frances Rothschild, Judge who granted continuance. Eventually, Mr. Wells succeeded in having the Summary Motion denied, by filing Respondent's Declaration under penalty of perjury, which states events contra-

ry to the true facts and mislead the Court in granting a denial.

The record will prove, that attorney Wells used similar tactics throughout this extended litigation.

On February 3, 1986, Petitioner received in service by mail dated Jan.30, 1986 in a envelope postmarked Jan.31, 1986 " Proposal Of Respondent As To content Of Statement Of Decision."

How is it possible, to file and serve " Objections and Proposal as to content of the Statement of Decision " by January 30, 1986 as requested by attorney Wells, in his February 11, 1986 letter, without having any knowledge as to the existence and content of the Respondent's Proposal ?

Your Honor,I hereby ask respectfully for full consideration of Petitioner's

" Objections and Proposal to the cotent of Statement of Decision " filed and duly served on the Respondent on February 10, 1986 in response to Respondent's initiated " Request For Statement Of Decision."

Any " Motion To Strike " by the Respondent will be opposed by the Petitioner in accordance with Code of Civil Procedures, California Rules of Court and Penal Code.

Respectfully yours,

(original) /S/ J. Stanley Tyrakowski

J. Stanley Tyrakowski, Petitioner
IN Pro. Per.

cc: Mr. Samuel J. Wells
Attorney for Respondent

J. STANLEY TYRAKOWSKI
2800 Westbrook Avenue
Los Angeles, California 90046
Ph: (213) 876-5902

Petitioner in Propria Persona

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

In Re the Marriage of:	Case No. D 119309
Petitioner: J. STANLEY TYRAKOWSKI	OBJECTIONS TO REPONDENT'S PROPOSAL AS TO CONTENT OF STATEMENT OF DECISION AND PETITIONER'S PROPOSAL AS TO CONTENT OF STATEMENT OF DECISION.
and	
Respondent: WLADYSLAWA BARR TYRAKOWSKI	

Pursuant to California Rules of Court, Rule 232(d) and Code of Civil Procedures Sec.632; partial quote; " After a party has requested such statement any party may make proposals as to the content of the statement of decision " end of quote.

Petitioner hereby submits his objec -

tions to Respondent's proposal and includes his proposal as to the content of statement of decision.

1. OBJECTIONS TO PAR. 1 OF REPONDENT'S STATEMENT OF DECISION.

The interpretation of Petitioner's testimony given at the trial, is completely distorted by the Respondent. Petitioner in his submitted written testimony and on the witness stand, testified that from the first day of meeting the Respondent in Sept, 1961 to the day of signing of the valid PREMARITAL AGREEMENT on Jan. 21, 1966, has never withheld information about his past legal problems in his first marriage, from Repondent.

Respondent was well informed in every aspect of legal obligation under the Premarital Agreement. Respondent was previously married in Poland to one William Barr

a U.S. citizen, and after arrival in the United States, within a month obtained a divorce in Las Vegas, Nevada. In 1963, Respondent had additional experience in L.A. Superior Court, in connection with her annulment proceedings.

The testimony of Mr. Pastecki, who testified among other things, that Respondent's English was not worse than his own, at the time they both work at at the Bechtel Corporation. Mr. Pastecki had a position of an engineer requiring communicative knowledge of English. This fact shall give credence that Respondent was also capable to understand and communicate in English.

At the time the Premarital Agreement was executed on Jan. 21, 1966, Respondent had already satisfactory command of English language.

The witness Mrs. Matuszkiewicz testimony refers back to the days when they both worked at Bank of America in 1961. The witness Mrs. Matuszkiewicz testified, that she is a good and close friend of the Respondent and considered the Respondent in 1961 as " extremely unsophisticated." The same witness testified that Petitioner send her a Christmas card with note stating that Respondent took everything, calling the Respondent a thief. On cross-examination by the Petitioner, asked if she could produce the evidence, the witness Mrs. Matuszkiewicz stated that she destroyed said card. The witness also testified that she has seen the Respondent paying bills for the construction of the " 2800 " house. However, on cross-examination admitted that she did not know that Petitioner was the one who completely

financed the construction of the " 2800 " house.

The question is asked, why a close and devoted friend was not told the true facts by the Respondent ? Was the Respondent rather shrewd and " highly sophisticated " or was she coniving by withholding information from a good friend, which information could later on interfere with Respondent's long range planning ?

The testimony of witness Mrs. Ewa Weyland who was called by the Petitioner and knew the Respondent the longest, being a friend of the family of over 20 years, sheds a different light as to Respondent's intention in her marriage to the Petitioner and is in full contradiction to testimonies of Respondent's witnesses who were neighbors and work acquaintances.

A reference by Respondent to Volume II,

Deposition of J. Stanley Tyrakowski, pp 139-141 confirms fully the trial Court findings, quote: " COURT FINDS ATTORNEY DONALD GALLAGHER PREPARED A STANDARD PRE-MARITAL CONTRACT FOR THE PARTIES WHO ENGAGED HIS SERVICES FOR THAT PURPOSE ONLY. COURT FINDS BOTH PARTIES WERE PRESENT IN HIS OFFICE WHEN HE EXPLAINED THE AGREE - MENT AND WHEN THE AGREEMENT WAS SIGNED." end of quote.

2. OBJECTIONS TO PAR. 2 OF RESPONDENT'S CONTENT OF STATEMENT OF DECISION AND PETITIONER'S PROPOSED CONTENT TO STATEMENT OF DECISION.

Based upon evidence stated above in par. 1, the trial Court findings and the tentative decision, quote: " THE COURT FINDS NEITHER UNDUE INFLUENCE NOR A CONFIDENTIAL RELATIONSHIP. COURT FINDS THE PARTIES ENTERED INTO A VALID PREMARITAL

AGREEMENT ON JAN. 21, 1966." end of quote.

The Statement of Decision should fully upheld the trial Court findings stated above.

3. OBJECTIONS TO PAR. 3 OF RESPONDENT'S CONTENT OF STATEMENT OF DECISION AND PETITIONER'S PROPOSED CONTENT TO STATEMENT OF DECISION.

The Statement of Decision should include the cost of construction of the residence located at 2800 Westbrook Ave, Los Angeles, CA 90046, and shall be the construction cost as stated in Petitioner's Exhibit 25, in the amount of $101,186 however, to rebut the Respondent's arguments, Petitioner in his objections will use Respondent's submitted figures.

Petitioner's Exhibit 25	$81,951.64	From JST acct. to W.Barr Builder acct.,

Petitioner's Exhibit 25	$3,217.17	Expenses paid from JST acct.,
Petitioner's Testimony	2,700.00	Interest at 9% for one year, on $30,000 loan from Respondent
Petitioner's Exhibit 25	1,017.15	Cash Expenses
	$88,885.96	
Respondent's Testimony	- 3,951.39	Non constuction items.
	$84,934.57	

The $60,000 trial Court awarded compensation is applied incorrectly in the Respondent's computation and is irrelevant to Respondent's and Agnes Varga testimony, as indicated on pp.3, lines 17-19 in Respondent's proposal.

It is assumed that the generous compensation was based upon the inflated figure of $300,000 for the cost of the structure of the " 2800 " house. The $300,000 figure is the result of location of the land owned by the Petitioner prior to marriage. On cross-examination, Respondent admitted

that a licensed general contractor's fee is between 10 and 15 percent of construction cost. This includes licensed contractor's personal effort, labor and complete responsibility including financial.

Applying the licensed general contractor's legitimate fee,to compensate the Respondent for her " personal effort and labor " during the construction of the " 2800 " house in 1976, the Respondent's compensation should be 15 percent of the cost of construction.

(84,934.57 x 0.15 = 13,332.94)

The realistic compensation for the Respondent's " personal effort and labor" in 1976 construction of the " 2800 "house should be $13,332.94.

It shall not be overlooked that Respondent during 1976 was sick and unemployed as stated in her own testimony, and was

receiving tax free disability and unem - ployment compensation. The Respondent also, received some compensation from the $15,000 interest paid the Respondent by the Petitioner, and the benefit of living in the " 2800 " house for 6 years. The Respondent's yearly income based on tax returns amounted in 1975 to $13,088 and in the year 1977 to $13,172.

The witness Agnes Varga who is a structural engineer in the building department in the city of Beverly Hills, testified that present (1986) construction cost index is between $50 and $60 per square foot. The house being approximately 2750 square feet, the construction cost would amount to: 2750 x 60 = $165,000 if built at the present time. The insurance policy for the " 2800 " house considers approximately $70 per square foot as re-

placement cost if there is a total destruction and complete loss.

By the application of construction trade rules in the determination of labor percentage in relation to construction cost, and using The Respondent stated figures and the trial Court's tentative court awarded compensation of $60,000 for the " personal effort and labor;" the labor percentage index for the "2800" house completed in 1975 - 1977, amounts to 70.64 percent of the construction cost.

$$\frac{60,000}{84,934} \times 100 = 70.64\ \%$$

By witness Agnes Varga supplied in - formation in her testimony, the labor percentage index for the " 2800 " house if built at the present time will amount to 36.36 percent of the construction cost.

$$\frac{60,000}{165,000} \times 100 = 36.36\ \%$$

The $60,000 Respondent's awarded compensation for " personal effoert and labor" if represented by labor percentage index (70.64% for 1975-1977 and 36.36% for 1986) are beyond any individual capability in the construction trade to deliver " personal effort and labor " in the amount of awarded compensation of $60,000 to the Respondent.

4. OBJECTIONS TO PAR. 4 OF RESPONDENT'S CONTENT OF STATEMENT OF DECISION AND AND PETITIONER'S PROPOSED CONTENT TO STATEMENT OF DECISION.

As noted immediately above and in view of Respondent's initiated REQUEST FOR STATEMENT OF DECISION, the content of her proposal, the Court should review the tentative decision for the amount of awarded Respondent compensation and find that the realistic amount of $13,332.94 should fully

compensate Respondent for her " personal effort and labor " during the construction of the " 2800 " house in 1976.

Also the Court should consider facts determined during the trial: " COURT FINDS ATTORNEY DONALD GALLAGHER PREPARED A STANDARD PREMARITAL CONTRACT FOR THE PARTIES WHO ENGAGED HIS SERVICES FOR THAT PURPOSE ONLY. COURT FINDS BOTH PARTIES WERE PRESENT IN HIS OFFICEWHEN HE EXPLAINED THE AGREEMENT AND THE AGREEMENT WAS SIGNED."

Those findings by the trial Court, also confirmed the facts that Respondent commited two counts of deliberate perjury, one in her Declaration date June 16, 1985 in opposition to Motion for Summary Judgment when she stated under penalty of perjury on page 3, lines 12-18 as follows: quote " Par.9., On approximately Jan.21, 1966, Petitioner brought the agreement to

to the apartment in which we were living and I signed it."

" Par. 10., When I signed the agreement I did not sign it in front of anyone else. I do not know Donald C.Gallagher whose name appears on the document nor have I ever met Mr. Gallagher to my knowledge."

Second count of perjury committed by the Respondent was her testmony given at the trial, when she changed her statement that she signed said agreement in the presence of attorney Gallagher but in the apartment where Repondent and Petitioner lived at that time. Said statement is also in contradiction to trial Court findings.

In view of Respondent's felonious conduct, the Court should consider the complete denial of any compensation to the Respondent and also the return by

Respondent of Petitioner's mother golden watch and make it part of findings in the Statement of Decision.

5. OBJECTIONS TO PAR. 5, 6 & 7 OF RESPONDENT'S CONTENT OF STATEMENT OF DECISION AND PETITIONER'S PROPOSED CONTENT TO STATEMENT OF DECISION.

Petitioner objects to statements in paragraphs 5, 6 and 7 in its entirety on following grounds: the trial Court tentative decision, quote: " TITLE TO 2800 WESTBROOK WAS TAKEN IN THE PETITIONER'S NAME. PETITIONER OWN THE LAND PRIOR TO MARRIAGE AND BUILT THE HOUSE AFTER MARRIAGE. SUMS FOR THE CONSTRUCTION OF SAID WERE FROM HIS INCOME."

In no place in trial Court findings and order is there any reference that Respon- shall retain any interest in the property, or shall the awarded compensation be app-

lied in a manner indicated by the Respondent in her proposal.

The $60,000 award is a generous com - pensation for " personal effort and labor " and once paid the obligation of the payer (Petitioner) is fulfilled as in any labor contract. Petitioner further objects to content of par. 5, 6 and 7 on the grounds that it is a deceptive manipulation and juggling of figures for the benefit of the Respondent to confuse and mislead for the purpose of extortion of higher compensation.

Applying the same technique of reasoning and drawing a conclusion from Respondent's own statement attributed by Respondent to testimony at the trial, Petitioner should be entitled to some percentage of Respondent's income for the duration of his life. In par. 1pp 2, lines 5-7 of the

Respondent Proposal As To The Content Of Statement Of Decision, quote: " Respondent would not have been able to cope with financial and educational requirements for a new life in the Unite States " without the aid and assistance from Petitioner.

Petitioner should be entitled to 20 percent of Respondent's income for life, the same percentage amount as awarded the Respondent.

$$\frac{60,000}{300,000} \times 100 = 20\%$$

This compensation should be for Petitioner's aid to Respondent in financial and educational matters during the (4) years of cohabitation and (17) years of marriage. Petitioner had sacrificed his most productive years for Respondent benefit, who left the Petitioner by breaching the marriage contract.

Petitioner whose health is very much impaired by the action and behaviour of the Respondent and whose life is left in shambles is retired, 65 years old and on limited income.

6. PETITIONER'S PROPOSAL AS TO CONTENT OF SATETMENT OF DECISION REGARDING RESPONDNT'S LEGAL FEES.

The trial Court findigs: " THE COURT FINDS EACH PARTY IS ABLE TO PAY HIS AND HER OWN ATTORNEY FEES. HOWEVER, THE COURT FINDS REPONDENT'S LEGAL FEES WERE SUBSTANTIALLY INCRESED BY THE VOLUMINOUS AND OFTEN IRRELEVANT AND UNNECESSARY DOCUMENTS AND HEARING WERE INITIATED BY THE PETITIONER."

The Petitioner is aware of the Court tentative decision. For the record, however, Petitioner believes that the Statement of Decision should find that:

" THE VOLUMINOUS AND OFTEN IRRELEVANT AND UNNECESSARY DOCUMENTS AND HEARING WERE INITIATED BY THE RESPONDENT."

The very fact that Respondent initiated the " REQUEST FOR A STATEMENT OF DECISION." and the content of her proposal, prepared by her attorney Samuel J. Wells speaks for itself, and has a familiar pattern of action pursued by the Respondent and her Counsel, throughout this action.

The DECLARATION OF SAMUEL J. WELLS REGARDING ATTORNEY'S FEE AND COST, EXECUTED on the 12th of January 1986, has been served on the Petitioner during trial in the afternoon of January 12, 1986, leav - ing no time or a chance to rebut his statements made under penalty of perjury.

The fact is and the records can prove that from all the voluminous pleadings,

only (3) Motions were initiated by the Petitioner. The remaining Petitioner's pleadings were filed in response to Respondent initiated action. Those consist of oppositions and replies to Respondent's originated pleadings. The (4) volumes Petitioner's Deposition and the numerous requested documents taken by Respondent's counsel Samuel J. Wells, consist in 50 percent of irrevelant examination not allowed in no-fault marriage dissolution proceedings. This was the reason why attorney Wells, so vehemently objected to the introduction of Petitioner's subpoenaed Deposition of J. Stanley Tyrakowski be submitted as Petitioner's evidence at the trial.

Following Motions were introduced by the Petitioner:

(1) MOTION REQUESTING SANCTIONS

AGAINST RESPONDENT AND RESPONDENT COUNSEL, PURSUANT TO CCP 128.5 AND DECLARATION OF J. STANLEY TYRAKOWSKI, filed May 17, 1985.

(2) MOTION FOR SUMMARY JUDGMENT; DEPOSITION OF J.STANLEY TYRAKOWSKI; PLEADINGS VERIFICATION AFFIDAVIT; MEMORANDUM OF POINTS AND AUTHORITIES.(CCP 437c). Filed May 17, 1985.

This motion was documented with all the documents submitted as evidence at the trial by the Petitioner, however, it was denied by the Court based upon, Respondent's Declaration par. 8 and 10, which declaration has been executed by the Respondent on June 16, 1985.

The findings of the trial Court determined that said declaration made under penalty of perjury was incorrect and not true, therefore is a subject of impeach-

ment of the Respondent.

The court denial of Summary Judgment, triggert numerous subsequent pleadings and action initiated by the Respondent and opposed by the Petitioner, including(10) days of trial, resulting in trial Court findings and order. This is again followed by a " REQUEST FOR STATEMENT OF DECISION " initiated by the Respondent.

(3) REQUEST FOR RECONSIDERATION OF " PETITIONER'S REPLY TO DECLARATION OF SAMUEL J. WELLS IN OPPOSITION FOR JUDGMENT AND REQUEST FOR ATTORNEY'S FEES." filed on June 17, 1985.

A true copy of pleadings of said Motion is hereto attached for this Court convenience.

The subject of this Motion is, two counts of perjury committed by the Declarant, Mr. Samuel J. Wells, in statements

made under penalty of perjury. Said statements made by attorney Wells are in contradiction to content of transcript of court proceedings and pleadings on record, and prove conclusively that statements made under penalty of perjury are incorrect and not true and are the basis for impeachment of attorney Wells.

In view of the above evidence and the violation of the "RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA " in this action by attorney Samuel J. Wells the Court should reconsider the tentative decision of the $16,750 in Respondent's legal fees to be paid by the Petitioner directly to attorney Samuel J. Wells, and relieve the Petitioner of such payments, in particular that the trial Court already found that; " EACH PARTY IS ABLE TO PAY HIS AND HER OWN ATTORNEY FEES." and make

it part of findings in the " STATEMENT OF DECISION."

DATED: February 10, 1986.

Respectfully submitted

(original) /s/ By J.Stanley Tyrakowski

Petitioner in Propria Persona

(Original filed on February 10, 1986 in trial Court department, DEPT 7.)

Honorable Barbara Jean Johnson
Judge of the Superior Court
Department 7, Room 240
111 North Hill Street
Los Angeles, CA 90012

April 16, 1986

Re: Marriage of Tyrakowski
Csae No. D 119309

Dear Judge Johnson:

On April 16, 1986 I have received a copy of a letter dated April 14, 1986, mailed to you by the respondent's attorney Mr. Samuel J. Wells, requesting the signing of the submitted judgment.

In a letter dated April 6, 1986 copy of which is herein attached, I have opposed said proposed judgment as not being in compliance with the trial court Statement of Decision.

The revised version <u>is not in compliance</u> with the Statement of Decision and is incorrect. Mr. Wells introduced his own version, which changes the mea-

ning of the trial court decision.

I hereby urge you strongly not to sign the submitted judgment.

Respectfully yours,

(original) /s/ J. Stanley Tyrakowski

cc: Mr. Samuel J. Wells
Attorney for Respondent.

Honorable Presiding Justice
and Associate Justices of the
Court of Appeal, of the State
of California, Second Appellate
District, Division One.
3580 Wilshire Blvd., Suite 301.
Los Angeles, CA 90010

July 31, 1986.

Re: The Marriage of Tyrakowski
Case No. B020735
(LASC No. D 119309)

Dear Presiding Justice,

For the convenience of the Appallate Court, appellant/petitioner shall briefly elucidate the main points in the respondent/respondent " OPPOSITION TO MOTION TO DISMISS CROSS-APPEAL; COUNTER MOTION FOR FEES; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF SAMUEL J. WELLS"

1. Calendar Time To Appeal Under Cal. Rules of Ct.3(b).

When notice of intention to vacate judgment is filed by any party, counsel should determine the earlier of 180 days

after entry of judgment or 90 days after filing of notice of intention to vacate and enter the earlier date on the calendar. If the order is denied, before the date then entered on the calendar, counsel should determine the earlier of the calendar date, or the date 30 days after entry of the order of denial. The earlier of those two dates should be entered on the calendar and any inapplicable dates expunged.

Judgment entered	May 6,1986
Earlier 180 days	Nov 3,1986
Filing of notice to "vacate"	March 20 1986
Earlier 90 days	June 18, 1986
Motion to "vacate" denied	April 14 1986
30 days after denial	May 14, 1986

Appellant/Petitioner " Notice of Appeal" filed May 12, 1986.

Cross-Appeal time to file, 20 days after first appeal mailed to party is June 1, 1986. Cal. Rules of Ct. 3(c).

Respondent/Respondent filed and served Notice of Cross-Appeal on July 3, 1986. The reviewing court has no jurisdiction.

2. Opposition To Motion To Dismiss Cross-Appeal, filed untimely.

A party served with a motion in appallate court must serve and file any opposition papers to the motion at least within ten days after service. Cal. Rules of Ct. 41(a).

Appellant/Petitioner filed and served motion to Dismiss Cross-Appeal on July 15, 1986.

Respondent/Respondent served and filed Opposition To Motion To Dismiss Cross-Appeal, on July 29, 1986 which the Appellant/Petitioner received in mail on July 30, 1986. The Respondent/Respondent opposing papers are untimely.

3. Argumentation.

Any arguments in Respondent/Respondent opposing papers are irrelevant, as those are points to be raised on appeal, and to which facts shall be furnished in records on appeal, and shall prove conclusively the opposite to the stated argu - ments.

4. Attorney's fees.

Any request for attorney's fees is frivolous and must be denied, and is a habitual step taken by the respondent's attorney throughout this action. The re - cords on appeal shall provide facts as to its justification.

5. General format and content.

In general the format and content does not comply with the appallate rules of the California Rules of Court, but re flects those used in the Superior Court.

6. Respondent/Respondent financial capability.

From July 16, 1986 trial court Order: " As to Respondent's request for attorney's fees and cost on appeal, the Court finds the Respondent has the ability to pay her own legal fees and cannot find that petitioner's appeal is totally without merit for purposes of assesing fees under 4370.5 (b) as to fees on appeal, since the Court has found that she has the ability to pay her own legal fees. The Court further finds that the Respondent has 8 unit apartment building and a gross salary approximately $3500 per month, and net salary of approximately $2975 per month and savings at the present time approximately $6000. Therefore, the request for a portion of legal fees and costs on appeal is denied."

Respectfully yours,

(original) /s/ J. Stanley Tyrakowski

J. Stanley Tyrakowski, Appellant/
Petitioner

cc: Samuel J. Wells, Attorney of
record for respondent/respondent
11661 San Vicente Blvd., Suite 1010
Los Angeles, CA 90049

(Note: A true copy of this letter has
been filed with the Court of
Appeal, Second Appallate Dist-
rict, Division One on August 1,
1986.)